

VZCZCXRO1202
RR RUEHPOD
DE RUEWCSF #2656 0681421
ZNR UUUUU ZZH
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SIPDIS
QQQQ
ZUI RUEHPOD0061 0680944
MESSAGE REJECTED - CONTAINS UNRECOGNIZED ORIGINATOR
-- ERRORED MESSAGE FOLLOWS --
RAAUZYUW RUEHPOD0061 0680944-UUUU--RHMCSUU.
ZNR UUUUU ZZH
R 090944Z MAR 07 ZDK
FM AMEMBASSY PODGORICA
TO RUEHC/SECSTATE WASHDC
INFO EUROPEAN POLITICAL COLLECTIVE
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK
RUEHC/USAID WASHDC
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC
RHMFIUU/US CUSTOMS AND BORDER PROTECTION WASHINGTON DC
RUEHPOD/AMEMBASSY PODGORICA
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UNCLAS SECTION 01 OF 03 PODGORICA 000061

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E.O. 12958: N/A
TAGS: [PGOV](#) [KJUS](#) [CASC](#) [MW](#)
SUBJECT: THE STATE OF MONTENEGRO'S JUDICIARY

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SUMMARY

1. (U) MONTENEGRO'S JUDICIARY IS WIDELY SEEN AS THE WEAK LEG OF GOOD GOVERNANCE. PUBLIC OPINION POLLS ROUTINELY SHOW A LACK OF CONFIDENCE IN THE COURTS. MORE DAMNING, THE CHIEF PROSECUTOR, HUMAN RIGHTS OMBUDSMAN, THE PRESIDENT OF THE BAR ASSOCIATION AND EVEN THE PRESIDENT OF THE SUPREME COURT AGREE THAT JUDGES ARE INEFFICIENT, SLOW, AND EXHIBIT POOR DECISION-MAKING, EVEN IF THEY DIFFER AS TO THE REASONS WHY. ALL AGREE THAT JUDGES ARE POORLY COMPENSATED (BOTH AS TO MONEY AND RESPECT). MOST ALSO CITE POOR LEADERSHIP BY THE PRESIDENT OF THE SUPREME COURT AS A FACTOR; HE FAULTS AN EXCESSIVE CASELOAD. GOOD POSSIBLE SOLUTIONS HAVE BEEN IDENTIFIED -- BETTER PAY, IMPROVED TRAINING AND STANDARDS, AND REMOVING EXTRANEIOUS WORKLOAD -- BUT THE MONEY AND POLITICAL WILL TO IMPLEMENT THE SOLUTIONS ARE MISSING. END SUMMARY.

INCOMPETENT JUDGES

2. (U) UNIFORMLY, EXPERT OBSERVERS OF THE COURTS FAULT THE LOW QUALITY OF THE JUDICIARY. THE CHIEF PROSECUTOR, HUMAN RIGHTS OMBUDSMAN, THE PRESIDENT OF THE BAR ASSOCIATION AND EVEN THE PRESIDENT OF THE SUPREME COURT AGREE THAT TOO MANY JUDGES ARE INEFFICIENT, SLOW, AND EXHIBIT POOR DECISION-MAKING. THERE IS AGREEMENT THAT FEW TALENTED LAWYERS ARE ATTRACTED TO THE BENCH, REPELLED BY LOW PAY (EURO 300 PER MONTH, WHEN A GOOD LAWYER CAN MAKE EUROS 3000) AND SCANT RESPECT - EVEN THOUGH JUDGES WERE RESPECTED IN THE PAST, SAID PRESIDENT OF THE SUPREME COURT VUKOTIC. THE RESULT IS HIGH TURNOVER -IN THE PAST TWO YEARS, 25 PERCENT OF MONTENEGRO'S 253 JUDGES LEFT, OFTEN THE BETTER JUDGES

FOR THE HIGHER-PAID PRIVATE SECTOR. THE LACK OF STRONG STANDARDS FOR PROSPECTIVE JUDGES MEANS THAT WHEN REPLACEMENTS ARE NAMED, POLITICAL CONSIDERATIONS OUTWEIGH PROFESSIONAL QUALIFICATIONS.

OVERLOADED COURTS

13. (U) MONTENEGRINS ARE INCREDIBLY LITIGIOUS, EVEN BY AMERICAN STANDARDS: SOME 300,000 CASES ARE CURRENTLY IN THE COURTS. WITH A POPULATION OF ONLY 630,000, ON AVERAGE ALMOST EVERY MAN, WOMAN AND CHILD IS INVOLVED IN A LAW SUIT - AND EACH OF AUTHORIZED 253 JUDGES HAS A CASELOAD OF OVER A THOUSAND SUITS. IN 2006, 136,670 NEW CASES WERE FILED, BUT ONLY 127,000 RESOLVED. PRESIDENT VUKOTIC TOLD POLOFF A MAJOR FACTOR IS THAT COLLECTION OF OVERDUE UTILITY BILLS (37 PERCENT OF THE CASELOAD), AND ROUTINE NOTARY TASKS (40 PERCENT), ARE STILL TREATED AS COURT CASES. VUKOTIC ADDED THAT WHILE THE MINISTRY OF JUSTICE HAS ACCEPTED THE COURTS PROPOSAL TO REMOVE THESE TWO AREAS FROM THE JUDICIARY, THE BILL HAS NOT BEEN ADOPTED BY THE GOVERNMENT AND SENT TO THE PARLIAMENT. THIS WOULD REDUCE CASELOADS TO THE LEVELS SEEN BEFORE 1999, THAT IS, ABOUT 50 TO 60 THOUSAND.

14. (U) LONG DELAYS RESULT FROM THE BACKLOG OF CASES. THE OMBUDSMAN FOR HUMAN RIGHTS TOLD POLOFF THAT ALMOST ALL OF HIS 1,100 COMPLAINTS A YEAR DEAL WITH THE COURTS, AND SPECIFICALLY LONG DELAYS; VERY FEW COMPLAIN ABOUT CORRUPTION, OR POLITICAL INFLUENCE. THE OMBUDSMAN CITED A SMALL NUMBER OF INSTANCES IN WHICH TWO OR EVEN THREE YEARS ELAPSED BETWEEN ARRESTS AND THE COMMENCEMENT OF TRIALS. THE OMBUDSMAN HAS PUBLICLY PROPOSED CHANGING THE LAW TO ALLOW SUITS TO RECOVER MONETARY DAMAGES FROM THE STATE IN CASES OF EXCESSIVE COURT DELAYS.

15. (U) JUDGE VUKOTIC UNDERScoreD TO POLOFF THAT A HIGH NUMBER OF ADMINISTRATIVE (GOVERNMENT AGENCY) AND LOWER COURT DECISIONS GET OVERTURNED ON APPEAL. HE NOTED IN PARTICULAR THAT OVER 50 PERCENT OF CUSTOMS AGENCY DECISIONS GET OVERTURNED. HE CITED THE FAILURE OF COURTS TO ROUTINELY PUBLISH THEIR DECISIONS AS CONTRIBUTING TO A NON-TRANSPARENT ENVIRONMENT, WHERE AGENCIES AND LOWER COURTS REPEAT ERRONEOUS DECISIONS. HE ALSO STRESSED THE NEED FOR MORE AND BETTER TRAINING OF JUDGES, COURT

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PERSONNEL, AND AGENCY RULE IMPLEMENTERS.

16. (U) MONTENEGRIN INTERLOCUTORS MINIMIZED THE ROLE OF OUTRIGHT CORRUPTION IN JUDICIAL DECISION MAKING. INSTEAD, THEY NOTED THAT THE CURRENT APPOINTMENT SYSTEM ENSURED THAT ONLY JUDGES CONNECTED TO CERTAIN INFLUENTIAL PEOPLE GOT APPOINTED. ONCE ON THE BENCH THE JUDGE "KNOWS HOW TO RULE" IN CASES INVOLVING THOSE INFLUENTIAL PERSONS, WITHOUT EXPLICIT BRIBERY OR INFLUENCE HAVING TO BE EXERTED. SIMILARLY, THEY SAID THAT IN CASES INVOLVING MORE PROMINENT MEMBERS OF ORGANIZED CRIME, THE JUDGE IS OFTEN AWARE OF THE POSSIBLE EXTRA-LEGAL CONSEQUENCES OF AN ADVERSE RULING, WITHOUT THAT HAVING TO BE DIRECTLY COMMUNICATED.

(NOTE: IN SEVERAL NOTORIOUS CASES, ALL THE WITNESSES TO A VISIBLE CRIME HAVE DEVELOPED LIMITED MEMORIES, AS IN THE MURDER COMMITTED BY A WELL-KNOWN CRIMINAL AT THE PODGORICA HOSPITAL. REPORTEDLY SOME TWO DOZEN WITNESSES TO THE MIDDAY SHOOTING ALL CLAIMED TO SEE NO MORE THAN "A BLACK HAND." THE LACK OF EVIDENCE IS A STATUTORY BAR TO PROSECUTION. END NOTE.)

POOR LEADERSHIP

17. (U) THE CHIEF PROSECUTOR, VESNA MEDENICA, HAS BEEN ESPECIALLY CRITICAL OF THE LEADERSHIP SHOWN BY SUPREME COURT PRESIDENT RATKO VUKOTIC. IN REPEATED, WELL-REPORTED PUBLIC COMMENTS, AND IN A MEETING WITH POLOFF, SHE HAS CALLED FOR THE PRESIDENT'S REPLACEMENT. IN HER REPORTS TO THE PARLIAMENT, MEDENICA HAS SAID THE COURTS ARE "INADEQUATE", WITH CASES OFTEN TERMINATED BY THE STATUTE OF LIMITATIONS AND VERDICTS ISSUED IN CONTRAST TO THE EVIDENCE. PRIVATELY, SHE SAID THAT RATKOVIC WAS UNWILLING OR UNABLE TO EXERCISE HIS ROLE AS LEADER OF THE COURT SYSTEM, AND WAS NOT TAKING STEPS TO ENSURE THAT JUDGES WERE TACKLING THEIR CASE LOAD. SHE NOTED A TRAFFICKING IN PERSONS CASE THAT HAS LAIN DORMANT FOR OVER TEN MONTHS AFTER THE ARRESTS, AND CIVIL CASES THAT ARE A DECADE OLD. NOTE: IF RATKOVIC DID STEP DOWN, THAT WOULD RESULT IN FOUR SUPREME COURT PRESIDENTS IN LESS THAN THREE YEARS. END NOTE.

POLITICAL INFLUENCE IN APPOINTMENTS, CORRUPTION

18. (U) ALL OBSERVERS NOTED TO POLOFF THE DELETERIOUS ROLE OF POLITICS IN APPOINTING JUDGES. CURRENTLY, A JUDICIAL COUNCIL (ITSELF COMPOSED OF SITTING JUDGES), PROPOSES CANDIDATES FOR THE BENCH TO THE PARLIAMENT. THE PARLIAMENT THEN VOTES ON INDIVIDUAL CANDIDATES, AND OFTEN REJECTS COUNCIL CANDIDATES DEEMED INSUFFICIENTLY CONNECTED TO THE RULING POLITICAL PARTIES. SOLUTIONS TO THE PROBLEM VARY, HOWEVER, AND REMAIN A CONTROVERSIAL SUBJECT IN THE CURRENT PARLIAMENTARY DISCUSSIONS OVER THE NEW DRAFT CONSTITUTION. THE OMBUDSMAN, A FORMER JUDGE, WOULD GIVE PARLIAMENT THE SOLE ROLE. CONVERSELY, THE PRESIDENT OF THE BAR ASSOCIATION WOULD REMOVE PARLIAMENT'S ROLE, AND HAVE THE JUDICIAL COUNCIL RECOMMEND CANDIDATES TO THE PRESIDENT OF MONTENEGRO. BOTH PROPOSALS HAVE ALSO BEEN RAISED IN PARLIAMENT. NO MONTENEGRINS MENTIONED TO POLOFF THE CREATION AND ADHERENCE TO HIGHER PROFESSIONAL STANDARDS FOR SELECTING JUDGES, EVEN THOUGH THIS HAS BEEN PROPOSED PREVIOUSLY BY USG-FUNDED "RULE OF LAW" PROGRAMS.

DONOR ASSISTANCE

19. (U) DONOR ASSISTANCE, TO DATE PRIMARILY FROM THE USG AND THE COUNCIL OF EUROPE, HAS ADVANCED THE STATE OF THE JUDICIARY. USAID PROGRAMS HELPED IN THE ESTABLISHMENT OF THE APPEALS AND ADMINISTRATIVE COURTS, AND CREATED VERY SUCCESSFUL PILOT PROGRAMS THAT ESSENTIALLY ELIMINATED ALL BACKLOGS IN TWO LOCAL COURTS. OTHER USAID PROGRAMS PLACED EXPERIENCED MONTENEGRIN JUDGES IN U.S. COURTS AS PROFESSIONAL INTERNS. DEPARTMENT OF JUSTICE OPDAT PROGRAMS, INCLUDING THE PLACEMENT FOR SIX MONTHS OF AN EXPERIENCED U.S. FEDERAL ORGANIZED PROSECUTORS IN THE STATE PROSECUTOR'S OFFICE, IMPROVED MONTENEGRO'S ABILITY TO

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PROSECUTE DIFFICULT CASES, INCLUDING THOSE INVOLVING ORGANIZED CRIME. THE USAID PROGRAM WILL END ON MARCH 31, 2007; THE OPDAT

PROGRAM CONTINUES, BUT WITH A LOWER PACE OF ACTIVITIES.

¶10. (U) THE EU'S CORDS PROGRAM IS INCREASING IN SIZE AND BUDGET, AS MONTENEGRO LOOKS TO SIGN ITS INTERIM STABILIZATION AND ACCESSION AGREEMENT (SAA) IN THE NEAR FUTURE. THE MULTI-MILLION EURO ANNUAL PROGRAMS WILL INCLUDE A "RULE OF LAW" COMPONENT, CURRENTLY BEING DESIGNED; THIS IS A NEW AREA FOR EU ASSISTANCE IN MONTENEGRO.

COMMENT

¶11. (U) ONE FUNDAMENTAL MUST CHANGE TO IMPROVE THE JUDICIARY IN MONTENEGRO: BETTER JUDGES. STRUCTURAL WEAKNESSES IN THE COURTS, PREVALENT TEN YEARS AGO, HAVE BEEN ADDRESSED (MANY THROUGH USG ASSISTANCE). THE NEXT STEP MUST BE TAKEN BY THE MONTENEGRINS: REQUIRING BETTER QUALIFIED JUDICIAL CANDIDATES, TO BE ATTRACTED BY BETTER WORKING CONDITIONS (HIGHER PAY, MORE STAFF, FEWER MATTERS NOT REQUIRING A JUDGE AND COURTROOM TO RESOLVE), AND BETTER TRAINING TO IMPROVE AND MAINTAIN THEIR SKILLS ONCE IN OFFICE. TO TAKE THAT STEP WILL REQUIRE THE GOM AND PARLIAMENT TO MUSTER THE POLITICAL WILL TO IMPOSE HIGHER STANDARDS, LIMIT THEIR OWN INFLUENCE, AND SPEND MORE OF THE BUDGET ON THE COURTS. END COMMENT.BARNES

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